

Senate Bill No. 599

CHAPTER 792

An act to add Section 851.90 to the Penal Code, relating to drug diversion.

[Approved by Governor October 10, 2003. Filed
with Secretary of State October 11, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 599, Perata. Drug diversion: sealed records.

Existing law authorizes the sealing of certain records in connection with the dismissal of charges, as specified.

This bill would provide that whenever a person is diverted pursuant to a drug diversion program administered by a superior court or is admitted to a deferred entry of judgment program for specified drug offenders, the person successfully completes the program, and it appears to the judge presiding at the hearing where the diverted charges are dismissed that the interests of justice would be served by sealing the records of the arresting agency and related court files and records with respect to the diverted person, the judge may order those records and files to be sealed, as specified. The bill would provide that the Department of Justice shall continue to be able to maintain and disseminate any records or documents received or maintained by it, as authorized by law.

The people of the State of California do enact as follows:

SECTION 1. Section 851.90 is added to the Penal Code, to read:

851.90. (a) (1) Whenever a person is diverted pursuant to a drug diversion program administered by a superior court pursuant to Section 1000.5 or is admitted to a deferred entry of judgment program pursuant to Section 1000, the person successfully completes the program, and it appears to the judge presiding at the hearing where the diverted charges are dismissed that the interests of justice would be served by sealing the records of the arresting agency and related court files and records with respect to the diverted person, the judge may order those records and files to be sealed, including any record of arrest or detention, upon the written or oral motion of any party in the case, or upon the court's own motion, and with notice to all parties in the case.

(2) If the order is made, the clerk of the court shall thereafter not allow access to any records concerning the case, including the court file, index, register of actions, or other similar records.

(3) If the order is made, the court shall give a copy of the order to the defendant and inform the defendant that he or she may thereafter state that he or she was not arrested for the charge.

(4) The defendant may, except as specified in subdivisions (b), (c), and (d), indicate in response to any question concerning the defendant's prior criminal record that the defendant was not arrested or granted statutorily authorized drug diversion or deferred entry of judgment for the offense.

(5) Subject to subdivisions (b), (c), and (d), a record pertaining to an arrest resulting in the successful completion of a statutorily authorized drug diversion or deferred entry of judgment program shall not, without the defendant's permission, be used in any way that could result in the denial of any employment, benefit, or certificate.

(6) Sealing orders made pursuant to this subdivision shall not be forwarded to the Department of Justice to be included or notated in the department's manual or electronic fingerprint image or criminal history record systems. Any sealing order made pursuant to this subdivision and received by the Department of Justice need not be processed by the department.

(b) The defendant shall be advised that, regardless of the defendant's successful completion of a statutorily authorized drug diversion or deferred entry of judgment program, the arrest upon which the case was based shall be disclosed by the Department of Justice in response to any peace officer application request, and that, notwithstanding subdivision (a), this section does not relieve the defendant of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

(c) The defendant shall be advised that, regardless of the defendant's successful completion of a statutorily authorized drug diversion or deferred entry of judgment program, the arrest upon which the case was based shall be disclosed by the Department of Justice or the court in which the matter was heard in response to any subsequent inquiry by the district attorney, court, probation department, or counsel for the defendant concerning the defendant's eligibility for any statutorily authorized drug diversion or deferred entry of judgment program in the future.

(d) A sealing order made pursuant to this section shall not apply to any record or document received or maintained by the Department of Justice; the court shall advise a defendant that, notwithstanding the issuance of a sealing order pursuant to this section, the Department of Justice shall continue to be able to maintain and disseminate any records



or documents received or maintained by the department, as authorized by law.

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